

MICHIGAN



"PROTECTING THE RIGHTS OF
PERSONS WITH DISABILITIES"

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Testimony of Mark McWilliams
Director, Information, Referral, and Education Services
House Oversight Hearing, 9/23/14

Good afternoon! I am Mark McWilliams, an attorney with Michigan Protection & Advocacy Service, Inc. (MPAS). MPAS is a private nonprofit organization mandated by federal law to provide advocacy services to individuals with disabilities in Michigan. Among the services we provide are information and referral services and direct representation by attorneys and advocates in select cases. Our services are confidential and free.

MPAS receives nearly 8,000 requests for advocacy assistance each year. About 25% of those contacts involve special education. Since we cannot provide direct advocacy to all of the people who contact us, we select work based on advocacy priorities developed by our Board of Directors. In the area of special education, our priorities focus on meeting the needs of children with challenging disability-related behavior through the administrative complaint process.

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We have maintained this focus over the past four years. Our goals are twofold: to help children with challenging disability-related behavior return to and succeed in school with proper behavior support; and to ensure that the state complaint process works properly.

Why is a robust and fully functional state complaint process important to Michigan's schoolchildren? There are at least two reasons. First, as a practical matter, it is the only accessible adjudicative means of resolving disputes. The due process hearing system is fundamentally toxic and broken, and mediation, while often effective, is not always balanced or sufficient to resolve all disputes. Second, and more central to our work, the complaint process is the only way a person outside state government can raise questions about schools' compliance with the law and the state's general supervision of that compliance. Increasingly, compliance is viewed not just as conformity to procedures and paperwork requirements but to outcomes. The comments to the 2006 federal special education regulations concluded:

"The broad scope of the state complaint procedures, as permitted in the regulations, is critical to each State's exercise of its general supervision responsibilities. The complaint procedures provide parents, organizations, and other individuals with an important means of ensuring that the educational needs of children with disabilities are met and provide the state educational agency with a powerful tool to identify and correct noncompliance with the law." 71 Fed.Reg. 46601 (8/21/06)

Within the past four years, MPAS has filed over 120 complaints related to children who struggle in school due to disability-related behavior. Many of these

complaints include multiple allegations, involve school districts from which we have multiple calls, and involve districts that are struggling to meet state graduation and dropout targets. We report resolutions favorable to children in about 75% of our complaints, with just over 50% of the complaint allegations resulting in findings of noncompliance.

These are not just numbers. These are individual children, often children with great potential to make positive contributions who, without state intervention, would often end up out of school, in the court system, or in prison, with little chance of success.

In our experience, the Michigan complaint investigation process has several strengths:

- Complaint investigations are timely, with most investigative reports completed within 60 calendar days as required by law.
- Procedural violations are investigated and addressed.
- "Child find" investigations, in which a district fails to identify, locate, and evaluate children who should be identified as eligible for special education, are more often handled according to the proper legal standards.
- Corrective actions, while not always adequate, have become more systemic and inclusive of all school staff (not just special education staff).

I would also note the following areas where, in our view, the process is weak. We have shared our opinions with MDE multiple times on these topics.

- A complaint is often viewed as a disagreement rather than a school district's failure to meet legal standards. Accordingly, the private resolution of a complaint about an individual student may be seen as the end of the complaint process. The general supervision aspect of a complaint, and its

potential for improving the lives of many students over time, is often overlooked.

- Complaint investigations and the principles that govern findings are inconsistent, reflecting the heavy reliance on intermediate school district staff to conduct investigations and prepare reports. Intermediate school districts have dual and sometimes conflicting roles in the complaint process.
- Errors of law as stated in investigation reports are not always corrected, and there is no visible process for doing so. This issue is more important today because many investigative reports are redacted and then published online.
- Investigations do not often delve into the substance and quality of a child's program, or the standards used in making decisions, but focus instead on process and documentation. If a document is filled out, that is sufficient, even if the information in the document is not helpful to a child.
- Compensatory education awards and enforcement of corrective actions are inconsistent, even with children who are similarly situated.
- Systemic complaints are often handled as a collection of individual complaints.

Nor can we conclusively say that our experience with the complaint process is the same as that of parents or others who file complaints.

Here are some recommendations:

- Concentrate investigative responsibility at the state level, with a necessary increase in resources.
- Update and then implement the mission of complaint investigation in light of the guidance in federal law emphasizing both the dispute resolution and the compliance/outcome functions of the complaint process.

- Develop guidance on the scope of complaint issues and investigation, including review of substantive and systemic issues, based on federal guidance and best practices.
- Adopt a process for review of legal determinations.
- Review and revise the dispute resolution process, including the due process hearing system, to expand alternatives in situations that are truly disputes without losing sight of the system's general supervision responsibility.
- Solicit community input from parents and providers in other systems on a regular basis on the accessibility of the complaint process to the public.

Thank you for hearing our testimony. I am happy to answer questions or provide additional information.